

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
Plaintiff

22-CR-0133

Vs.
ROBERT CALKINS JR.,
Defendant

Buffalo, New York
February 9, 2023

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TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE RICHARD J. ARCARA
UNITED STATES MAGISTRATE JUDGE

U.S. ATTORNEY'S OFFICE
BY: DAVID J. RUDROFF, ESQ.
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202
Appearing on behalf of the Plaintiff

JAMES L. RIOTTO, II
30 West Broad Street
Suite 306
Rochester, New York 14614
Appearing on behalf of the Defendant

COURT REPORTER: Brandi A. Wilkins
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1 THE CLERK: All rise.
2 THE COURT: Be seated, please.
3 THE CLERK: This is United States versus
4 Robert Calkins Jr., Docket Number 22-CR-0133. This is
5 a change of plea hearing. Assistant United States
6 Attorney David Rudroff on appearing on behalf of the
7 Government and James L. Riotto II appearing with
8 defendant.

9 THE COURT: Morning.
10 MR. RUDROFF: Morning, Your Honor.
11 MR. RIOTTO: Morning.
12 THE COURT: It's my understanding that Mr.
13 Calkins is prepared to enter a plea of guilty to an
14 agreed upon charge in the indictment; is that correct?

15 MR. RUDROFF: That's correct, Your Honor.

16 THE COURT: And Mr. Riotto, have you
17 explained to him procedure that I will utilize in
18 determining whether that plea should be accepted --

19 MR. RIOTTO: I have, Your Honor.

20 THE COURT: -- pursuant to Rule 11 of the
21 Federal Rules of Criminal Procedure?

22 MR. RIOTTO: Yes, Your Honor.

23 THE COURT: And is he agreeable to allowing
24 me to place him under oath and question him about the
25 plea?

1 MR. RIOTTO: He is, Your Honor.

2 THE COURT: All right. Mr. Calkins?

3 MR. CALKINS: Yes.

4 R O B E R T C A L K I N S , after having
5 been duly called and sworn, testified as follows:

6 THE COURT: Because you are now under oath
7 you must answer each and every one of my questions not
8 only truthfully but also completely because if you
9 should knowingly and/or intentionally answer any
10 question less than truthfully by withholding material
11 facts or information that can result with your being
12 charged with an additional crime of perjury and/or
13 making a false statement; do you understand?

14 MR. CALKINS: Yes, sir.

15 THE COURT: What is your full name?

16 MR. CALKINS: Robert Calkins Jr.

17 THE COURT: How old are you?

18 MR. CALKINS: 38.

19 THE COURT: How far did you go in school?

20 MR. CALKINS: I want to say 9th grade, 10th
21 maybe. I can't -- I never finished, sorry.

22 THE COURT: How far did you go in school?

23 MR. CALKINS: 10th grade.

24 THE COURT: Have you been treated recently
25 for any mental illness?

1 MR. CALKINS: No.

2 THE COURT: Have you been treated recently
3 for any addiction to narcotic drugs of any kind?

4 MR. CALKINS: No.

5 THE COURT: Are you presently under the
6 influence of any drug?

7 MR. CALKINS: No, sir.

8 THE COURT: Are you presently under the
9 influence of any medication?

10 MR. CALKINS: I take medication, yes.

11 THE COURT: I'm sorry?

12 MR. CALKINS: I do take medication.

13 THE COURT: What type?

14 MR. CALKINS: Um, it's a Naproxen. I'm not
15 sure if -- it's supposed to be like a type of pain
16 killer like a Tylenol kind of.

17 THE COURT: When was the last time you took
18 that?

19 MR. CALKINS: This morning at um 7:30.

20 THE COURT: Does that medication in any way
21 affect your ability to think clearly?

22 MR. CALKINS: No, sir.

23 THE COURT: Does it in any way affect your
24 judgment?

25 MR. CALKINS: No.

1 THE COURT: Does it in any way affect your
2 ability to make decisions that are important to your
3 life?

4 MR. CALKINS: No, sir.

5 THE COURT: Are you able to think clearly
6 when you are under this medication?

7 MR. CALKINS: Yes, I am.

8 THE COURT: Have you ever experienced being
9 confused or not being able to understand things when
10 you were under this medication in the past?

11 MR. CALKINS: No, sir.

12 THE COURT: Are you under the influence of
13 any alcoholic beverage of any kind?

14 MR. CALKINS: No, I am not.

15 THE COURT: The Court having observed the
16 demeanor of the defendant and having heard his
17 responses to my initial inquiries, I find that he is
18 competent and able to make a knowing and voluntary
19 decision to proceed with this proceeding pursuant to
20 Rule 11 of the Federal Rules of Criminal Procedures.
21 I show you what is entitled a consent to proceed
22 before a United States magistrate judge and I ask you
23 if that's your signature that appears in the center
24 right hand portion of the document?

25 MR. CALKINS: Yes, sir.

1 THE COURT: Did you read this consent before
2 you signed it?

3 MR. CALKINS: Yes, I did.

4 THE COURT: Did you discuss it with your
5 attorney, Mr. Riotto, before you signed it?

6 MR. CALKINS: Yes, I did.

7 THE COURT: Were you able to ask questions
8 of your attorney about this consent, what it was and
9 how it would work and what its effect would be if you
10 signed it?

11 MR. CALKINS: Yes, I did.

12 THE COURT: And did Mr. Riotto answer any
13 and all questions you may have had about the consent
14 before you signed it?

15 MR. CALKINS: Yes, he did.

16 THE COURT: Is there anything about the
17 consent you do not understand at this time?

18 MR. CALKINS: No.

19 THE COURT: Now, do you realize by signing
20 this consent you have agreed to allow me, a United
21 States magistrate judge, to conduct this proceeding
22 pursuant to Rule 11 of the Federal Rules of Criminal
23 Procedure rather than have it done by a United States
24 district judge that is an Article 3 of the
25 constitution judge; you understand that?

1 MR. CALKINS: Yes, sir.

2 THE COURT: And you understand that by
3 signing this consent you are giving up your right to
4 appear for trial before a United States district
5 judge?

6 MR. CALKINS: Yes.

7 THE COURT: What you are offering to do is
8 to enter a plea of guilty to a charge contained in the
9 indictment before me --

10 MR. CALKINS: Yes, sir.

11 THE COURT: -- do you understand that?

12 MR. CALKINS: Yes, sir.

13 THE COURT: And is that what you wish to do?

14 MR. CALKINS: Yes.

15 THE COURT: Is there anything you wish to
16 discuss with your attorney, Mr. Riotto, about this
17 consent or anything else before we proceed any
18 further?

19 MR. CALKINS: No, sir.

20 THE COURT: Once again, the Court having
21 observed the demeanor of the defendant and having
22 heard his responses to my questions, I find that he
23 has made a knowing and voluntary decision and consent
24 to proceed before me, a United States Magistrate
25 Judge, pursuant to Rule 11 of the Federal Rules of

1 Criminal Procedure in the process of taking his plea
2 of guilty to a charge that has been agreed upon.
3 Therefore, I am approving this consent this 9th day of
4 February, 2023.

5 I show you what is entitled a plea agreement
6 consisting of 17 typewritten pages and I show you the
7 last page of that agreement which is a signature page
8 and I ask you if that's your signature that appears in
9 the middle left hand side of the page?

10 MR. CALKINS: Yes, sir.

11 THE COURT: And Mr. Riotto, that's your
12 signature that appears to the right of Mr. Calkins
13 signature?

14 MR. RIOTTO: It is, Your Honor.

15 THE COURT: You have a copy of the plea
16 agreement in front of you, the one that you signed?

17 MR. RIOTTO: We do, Your Honor.

18 THE COURT: Mr. Calkins?

19 MR. CALKINS: Yes, sir.

20 THE COURT: All right. Before you signed
21 this plea agreement, did you review it with your
22 attorney Mr. Riotto on a line by line, paragraph by
23 paragraph, page by page basis?

24 MR. CALKINS: Yes, I did.

25 THE COURT: And as you went through this

1 plea agreement on a line by line, paragraph by
2 paragraph, page by page review, were you able to ask
3 questions of your attorney about any line --

4 MR. CALKINS: Yes, I was.

5 THE COURT: -- or any paragraph or any page
6 of the agreement?

7 MR. CALKINS: Yes, sir.

8 THE COURT: And did your attorney answer to
9 your satisfaction any questions you may have had about
10 any line or any paragraph or any page of this plea
11 agreement?

12 MR. CALKINS: Yes, sir.

13 THE COURT: Are there any questions you
14 still wish to ask of your attorney about this plea
15 agreement before we proceed any further?

16 MR. CALKINS: No, sir.

17 THE COURT: Is there anything about this
18 plea agreement that you do not understand at this
19 time?

20 MR. CALKINS: No, sir.

21 THE COURT: Now, do you understand that if
22 your plea of guilty is accepted and you are sentenced
23 accordingly by a district judge that this is the only
24 plea agreement that you can claim exists between you
25 and the Government?

1 MR. CALKINS: Yes, sir.

2 THE COURT: That you cannot claim at a later
3 date that you were relying on a -- another agreement
4 or a supplemental agreement or a side agreement or any
5 other agreement of any type; do you understand that?

6 MR. CALKINS: Yes, sir.

7 THE COURT: That this is the only agreement
8 that would have any effect, any legal effect between
9 you and the Government if your plea of guilty is
10 accepted and you are sentenced by the district judge?

11 MR. CALKINS: Yes, sir.

12 THE COURT: Knowing that, do you still wish
13 to go forward with this plea?

14 MR. CALKINS: Yes, I do.

15 THE COURT: I want you to look at the first
16 page of the plea agreement with particular focus on
17 the paragraph entitled the plea and possible sentence.
18 Do you see that before you?

19 MR. CALKINS: Yes, sir.

20 THE COURT: And do you understand that by
21 signing this plea agreement you acknowledge and agree
22 that under the law namely your agreement to plead
23 guilty to having violated Title 18 of the United
24 States Code Sections 2251A and 2251E, production of
25 child pornography. There is a mandatory minimum term

1 of imprisonment of 15 years and a maximum possible
2 sentence that can be imposed on you of up to 30 years
3 along with a fine up to \$250,000 and a \$100 special
4 assessment. Do you understand that?

5 MR. CALKINS: Yes, sir.

6 THE COURT: And do you also understand that
7 in addition to any term of imprisonment that can be
8 imposed upon you if your plea of guilty is accepted
9 the sentencing judge will also be able to subject you
10 to a term of supervised release of up -- of at least
11 five years and anywhere up to life after you have
12 completed any prison term that has been imposed on
13 you; do you understand that?

14 MR. CALKINS: Yes, sir.

15 THE COURT: Do you understand that if your
16 plea of guilty is accepted and you are sentenced to a
17 term of imprisonment and after you've completed that
18 term you are also subject to a term of supervised
19 release as part of your sentence that if you are found
20 to be in violation of any term or condition of
21 supervised release that can result in your being
22 brought back into court and being sentenced to a term
23 of imprisonment a second time because of that
24 violation of supervised release; do you understand
25 that?

1 MR. CALKINS: Yes, sir.

2 THE COURT: Knowing that you could be sent
3 back to prison for a second term of imprisonment if
4 you are found to have violated the term of supervised
5 release, do you still wish to go forward with this
6 plea?

7 MR. CALKINS: Yes, sir.

8 THE COURT: Knowing that you could be
9 sentenced anywhere from a mandatory minimum of 5 years
10 imprisonment up to a possible term of life
11 imprisonment of 30 -- or I'm sorry, up to a term of
12 imprisonment of up to 30 years along with the fine
13 anywhere from \$1 to \$250,000 and a special mandatory
14 fee or assessment of \$100, do you still wish to go
15 forward with this plea?

16 MR. CALKINS: Yes, sir.

17 THE COURT: I want you to turn to Page 5 of
18 your plea agreement. Do you have that in front of
19 you?

20 MR. CALKINS: Yes, sir.

21 THE COURT: And I want you to focus on the
22 paragraphs entitled sentencing guidelines, base
23 offense level, specific offense characteristics, U.S.
24 sentencing guideline Chapter 4, adjustments, turning
25 to Page 6 adjusted offense level acceptance of

1 responsibility and criminal history category and then
2 turn to Page 7 entitled guidelines application
3 calculation and impact. Do you understand that all of
4 the information set forth under those headings on
5 Pages 5, 6 and 7 regarding a possible sentence in the
6 application of the federal sentencing guidelines,
7 those are calculations and applications that had been
8 made by your attorney and the attorney for the
9 Government. Do you understand that?

10 MR. CALKINS: Yes, sir.

11 THE COURT: Those evaluations and
12 applications and calculations as set forth in your
13 plea agreement are not binding on the district judge
14 if he accepts your plea of guilty; do you understand
15 that?

16 MR. CALKINS: Yes, sir.

17 THE COURT: That if he accepts your plea of
18 guilty he will be able to conduct his own independent
19 analysis and application of the sentencing guidelines
20 and then create and impose a sentence based on his
21 calculations under the guidelines; do you understand
22 that?

23 MR. CALKINS: Yes, sir.

24 THE COURT: And that independent review and
25 evaluation and application of the federal sentencing

1 guidelines by the district judge assuming he has
2 accepted your plea of guilty can be different than
3 what is set forth in your plea agreement on Pages 5, 6
4 and 7; do you understand that?

5 MR. CALKINS: Yes, sir.

6 THE COURT: And that his calculations and
7 evaluation and application of the federal sentencing
8 guidelines can be different in that they will result
9 in a more severe sentence than what you and your
10 attorney and the attorney for the Government have
11 indicated on Pages 5, 6 and 7; do you understand that?

12 MR. CALKINS: Yes, sir.

13 THE COURT: Knowing that, knowing that the
14 district judge is not bound by the calculations in the
15 plea agreement and knowing that he can arrive at an
16 independent application and calculation on his own
17 that can result in a greater sentence than what is set
18 forth in those paragraphs on Pages 5, 6 and 7, do you
19 still wish to go forward with this plea?

20 MR. CALKINS: Yes, sir.

21 THE COURT: I want you to turn to Page 9 of
22 your plea agreement and look at the heading
23 restitution in Paragraph 23 set forth therein; do you
24 see that?

25 MR. CALKINS: Yes, sir.

1 THE COURT: Do you understand that under
2 that provision you have agreed that if your sentence
3 of guilty is accepted that under Title 18 of the
4 United States Code Section 2259 the Court must order
5 restitution for the full amount of the victims or
6 victims compensable losses but no less than \$3,000 per
7 victim; do you understand that?

8 MR. CALKINS: Yes, sir.

9 THE COURT: And that an order of restitution
10 would be issued by the Court to enforce that
11 provision; do you understand that?

12 MR. CALKINS: Yes, sir.

13 THE COURT: And that that would subject any
14 and all property that you might own or have an
15 interest in to be seized and sold in order to
16 effectuate that order of restitution; do you
17 understand that?

18 MR. CALKINS: Yes, sir.

19 THE COURT: Knowing that, do you still wish
20 to go forward with this plea?

21 MR. CALKINS: Yes, I do.

22 THE COURT: I want you to turn to Page 12 of
23 your plea agreement and focus on the heading appeal
24 rights at the bottom of the page and Paragraph 32 on
25 Page 30 -- on Page 13; do you see that?

1 MR. CALKINS: Yes, sir.

2 THE COURT: Now, do you understand if your
3 plea of guilty is accepted and the judge imposes a
4 sentence on you that is in accordance with what the
5 law allows and that sentence falls within or is less
6 than the mandatory minimum term of imprisonment of 15
7 years or somewhere up to a maximum term of 30 years
8 along with a fine within the parameters of \$1 to
9 \$250,000 and a \$100 special assessment, if such a
10 sentence is imposed on you along with a term of
11 supervised release of at least five years or more all
12 the way up to life, that you then will not be able to
13 appeal that sentence to a higher court and ask that
14 court to either set aside that sentence or to allow
15 you to withdraw your plea of guilty; do you understand
16 that?

17 MR. CALKINS: Yes, sir.

18 THE COURT: Knowing that, knowing that you
19 are giving up that right if the judge arrives at a
20 sentence that is within the confines I've described,
21 do you still wish to go forward with this plea?

22 MR. CALKINS: Yes, sir.

23 THE COURT: I want you to turn to Page 14 of
24 your plea agreement. Do you see that in front of you?

25 MR. CALKINS: Yes, sir.

1 THE COURT: And focus on the heading
2 forfeiture provisions and the paragraphs they're
3 under. Do you understand that if your plea of guilty
4 is accepted and you are sentenced accordingly you have
5 also agreed to forfeit certain property that you
6 either own or have an interest in and that property is
7 listed therein as the Samsung Galaxy J3 Luna Pro Model
8 SMS327BL, a Samsung Galaxy S9 Model SM-G960U and the
9 Samsung Galaxy S7 Model SM-G930VL. Those are cellular
10 telephones that are subject to being seized by the
11 Government and disposed of by the Government never to
12 be returned to you. Do you understand that?

13 MR. CALKINS: Yes, sir.

14 THE COURT: Knowing that, do you still wish
15 to go forward with this plea?

16 MR. CALKINS: Yes.

17 THE COURT: Once again, is there anything
18 about this entire plea agreement that you do not
19 understand?

20 MR. CALKINS: No, sir.

21 THE COURT: And once again, even though I
22 have only asked specific questions about certain
23 provisions of this plea agreement, did you review the
24 plea agreement on a line by line, paragraph by
25 paragraph, page by page basis with your attorney?

1 MR. CALKINS: Yes, sir.

2 THE COURT: Is there anything you wish to
3 discuss with your attorney before we proceed any
4 further?

5 MR. CALKINS: No, sir.

6 THE COURT: Is there anything about what we
7 have done up to this point that you do not understand?

8 MR. CALKINS: No, sir.

9 THE COURT: You have a copy of the
10 indictment in front of you?

11 MR. CALKINS: Yes, sir.

12 THE COURT: Now, do you understand you are
13 offering to plead guilty to the charge contained in
14 count 1 of the indictment which reads as follows, that
15 on or about December 2, 2018 in the Western District
16 of New York you the defendant, Robert Calkins Jr., did
17 employ, use, persuade, induce, entice and coerce a
18 minor, that is victim one, a person known to the Grand
19 Jury to engage in sexually explicit conduct for the
20 purpose of producing a visual depiction of such
21 conduct, that is a digital file bearing the name
22 1570921574478.JPG which visual depiction was produced
23 and transmitted using materials that had been mailed,
24 shipped and transported in and affecting interstate
25 and foreign commerce by any means including by

1 computer all in violation of Title 18 of the United
2 States Code Sections 2251A and 2251E. Do you
3 understand that's the charge you are willing to plead
4 guilty to?

5 MR. CALKINS: Yes, sir.

6 THE COURT: And that's the charge that is
7 covered on Page 1 of your plea agreement setting forth
8 the possible sentence that can be imposed on you if
9 your plea of guilty is accepted. Do you understand
10 that?

11 MR. CALKINS: Yes, sir.

12 THE COURT: And that's the paragraph that we
13 reviewed just a few moments ago. Do you understand?

14 MR. CALKINS: Yes.

15 THE COURT: And is that what you wish to do?

16 MR. CALKINS: Yes, sir.

17 THE COURT: Now, have you had an opportunity
18 to discuss the facts and circumstances of this case
19 with your attorney, Mr. Riotto?

20 MR. CALKINS: Yes, I have.

21 THE COURT: And during the course of your
22 discussions with your attorney about the facts and
23 circumstances, were you able to ask questions of your
24 attorney about those facts and circumstances?

25 MR. CALKINS: Yes.

1 THE COURT: And did your attorney answer any
2 and all questions you may have had about the facts and
3 circumstances of this case?

4 MR. CALKINS: Yes, sir.

5 THE COURT: Are there any questions you
6 still wish to ask of him before we proceed any
7 further?

8 MR. CALKINS: No, sir.

9 THE COURT: Were you also able to discuss
10 with your attorney, Mr. Riotto, the law that would
11 apply in this case and how it would be applied to
12 those facts and circumstances which you and he
13 discussed?

14 MR. CALKINS: Yes, sir.

15 THE COURT: And were you able to ask
16 questions of him about that law?

17 MR. CALKINS: Yes.

18 THE COURT: And how that law would apply and
19 the effect of that application?

20 MR. CALKINS: Yes, sir.

21 THE COURT: Are there any questions you
22 would like to still ask of your attorney about the law
23 in this case?

24 MR. CALKINS: No, sir.

25 THE COURT: Or any other questions you may

1 wish to have or discuss with him?

2 MR. CALKINS: No, sir.

3 THE COURT: And once again, did your
4 attorney answer any and all questions you may have had
5 about the law in this case or the facts and
6 circumstances or how that law would apply?

7 MR. CALKINS: Yes, he did.

8 THE COURT: Are you offering to plead guilty
9 to this charge because you are guilty and for no other
10 reason?

11 MR. CALKINS: Yes, sir.

12 THE COURT: Is anyone forcing you in any way
13 to enter a plea of guilty to this charge?

14 MR. CALKINS: No, sir.

15 THE COURT: Has anyone threatened you in any
16 way in order to have you enter a plea of guilty to
17 this charge?

18 MR. CALKINS: No, sir.

19 THE COURT: Have any promises been made to
20 you other than what might be set forth in your plea
21 agreement --

22 MR. CALKINS: No, sir.

23 THE COURT: -- in order to have you enter a
24 plea of guilty to this charge?

25 MR. CALKINS: No, sir.

1 THE COURT: Once again, are you offering to
2 plead guilty to this charge because you are guilty and
3 for no other reason?

4 MR. CALKINS: Yes, sir.

5 THE COURT: Now, do you understand that
6 under the law you are allowed and have the right to
7 enter a plea of not guilty and that you can force the
8 Government to prove this charge against you at a
9 public trial?

10 MR. CALKINS: Yes, sir.

11 THE COURT: And that you are entitled to be
12 represented at all stages of this case including the
13 trial by an attorney?

14 MR. CALKINS: Yes, sir.

15 THE COURT: And that you are to -- that you
16 are presumed innocent of all these charges all during
17 this entire case until such time as the trial is
18 completed and a verdict of guilt is found based on
19 legally competent evidence which has established your
20 guilt beyond a reasonable doubt; do you understand
21 that?

22 MR. CALKINS: Yes, sir.

23 THE COURT: And do you understand that at
24 the public trial you and your attorney would have the
25 right to see and hear the Government witnesses against

1 you and your attorney would have the right to question
2 those witnesses to show that they were either mistaken
3 or misrepresenting or outright lying; do you
4 understand that?

5 MR. CALKINS: Yes, sir.

6 THE COURT: And do you understand that at
7 the public trial you and your attorney would also have
8 the right to see the Government's other evidence and
9 test its validity evidence such as but not limited to
10 DNA evidence, video tapes, video recordings,
11 fingerprint evidence, any kind of electronic data, any
12 type of other tangible evidence that the Government
13 was offering in support of its burden of proving your
14 guilt beyond a reasonable doubt, you and your attorney
15 would have the right to see and test the validity of
16 that evidence; do you understand that?

17 MR. CALKINS: Yes, sir.

18 THE COURT: And do you understand that at
19 the public trial you would have the right to call
20 witnesses on your own behalf?

21 MR. CALKINS: Yes, sir.

22 THE COURT: And that even if those witnesses
23 did not wish to appear voluntarily at the trial you
24 could compel their appearance as long as they were
25 within the jurisdiction of the United States by way of

1 subpoena or judicial process; do you understand that?

2 MR. CALKINS: Yes, sir.

3 THE COURT: And do you understand that at
4 the public trial you would have the right to present
5 any other evidence that you and your attorney think
6 the jury should be made aware of such as digital
7 electronic evidence, fingerprint evidence, video
8 recordings, conversational recordings, fingerprint
9 evidence, any other kind of evidence that you and your
10 attorney think the jury should have available for its
11 consideration you would be allowed to offer at the
12 trial; do you understand that?

13 MR. CALKINS: Yes, sir.

14 THE COURT: And do you understand that at
15 the trial you would have the right to remain silent
16 throughout the entire trial and that you could not be
17 compelled by anyone to answer any questions or make
18 any statements?

19 MR. CALKINS: Yes, sir.

20 THE COURT: And do you understand that if
21 you exercise that right at the trial it could not be
22 used against you in any way at the trial?

23 MR. CALKINS: Yes, sir.

24 THE COURT: And do you understand that if
25 you so chose the choice would be solely yours, you

1 could take the witness stand and testify on your own
2 behalf?

3 MR. CALKINS: Yes, sir.

4 THE COURT: And do you understand that at
5 the trial you would have the right to have this case
6 heard by a jury of 12 jurors?

7 MR. CALKINS: Yes, sir.

8 THE COURT: And that before you could be
9 found guilty the evidence received at the trial must
10 establish your guilt beyond a reasonable doubt and
11 that all 12 jurors would have to unanimously agree
12 that your guilt had been established beyond a
13 reasonable doubt before you could be found guilty of
14 the charge; do you understand that?

15 MR. CALKINS: Yes, sir.

16 THE COURT: And do you understand that even
17 if you went to trial and were found guilty by a jury
18 unanimously you would have the right to file an appeal
19 to a higher court and ask that higher court to set
20 aside that finding of guilt and enter a judgment of
21 acquittal in your behalf or in the alternative grant
22 you a new trial; do you understand that?

23 MR. CALKINS: Yes, sir.

24 THE COURT: And do you understand that by
25 pleading guilty you are giving up all of those rights?

1 In other words, you will not be presumed innocent.
2 You will be deemed guilty by reason of your own plea.
3 You will not have a public trial with a jury. You
4 will not be able to see or hear the Government
5 witnesses that the Government was going to call at the
6 trial. You and your attorney will not be able to
7 question or test the validity of any other evidence
8 the Government was going to use at the trial. You
9 will not be able to call any witnesses on your behalf
10 or present any other evidence on your behalf and you
11 will not be able to testify on your own behalf because
12 there will be no trial and if as I previously
13 indicated and discussed with you your plea of guilty
14 is accepted and you are sentenced accordingly, under
15 your plea agreement you will not be able to appeal to
16 a higher court to either set aside that sentence or to
17 withdraw your plea of guilty. Knowing that, knowing
18 that you are giving up all of those rights, do you
19 still wish to go forward with this plea?

20 MR. CALKINS: Yes, sir.

21 THE COURT: Is there anything you wish to
22 ask of your attorney at this stage before we proceed
23 any further?

24 MR. CALKINS: No, sir.

25 THE COURT: Now, do you understand that if

1 your plea of guilty is accepted and sentence is
2 imposed on you, you will then have a criminal record
3 for the rest of your life under the laws of the United
4 States?

5 MR. CALKINS: Yes, sir.

6 THE COURT: And do you understand that that
7 criminal record could then prevent you for the rest of
8 your life from exercising certain valuable civil
9 rights such as but not limited to the right to have
10 certain types of employment or the right to vote in
11 certain types of elections and certain other civil
12 rights; you know that?

13 MR. CALKINS: Yes, sir.

14 THE COURT: Knowing that you would be
15 prohibited from exercising certain valuable civil
16 rights because of your criminal history by reason of
17 this plea of guilty, do you still wish to go forward
18 with this plea?

19 MR. CALKINS: Yes, sir.

20 THE COURT: You also understand that if it
21 is determined that you are not a citizen of the United
22 States and this plea of guilty is accepted thereby
23 creating a criminal record, based on that plea, you
24 would be subject to action of removal by the
25 appropriate authorities under the immigration laws of

1 the United States?

2 MR. CALKINS: Yes, sir.

3 THE COURT: Knowing that, do you still wish
4 to go forward with this plea?

5 MR. CALKINS: Yes, I do.

6 THE COURT: Now, I want you to listen very
7 carefully what the attorney for the Government is
8 going to state the Government's evidence would consist
9 of in proving the elements of this charge and in
10 proving your guilt beyond a reasonable doubt of this
11 charge, and after he has completed his presentation,
12 I'm going to ask you if what he has stated is in fact
13 what happened, if what he has stated is true and that
14 if you disagree in any way with anything that he has
15 stated I'm going to require you to tell me in detail
16 what it is you do not agree with; do you understand?

17 MR. CALKINS: Yes, sir.

18 THE COURT: So listen carefully now. Mr.
19 Rudroff, if this case were to go to trial, what would
20 the Government's evidence consist of in establishing
21 the elements of the crime charged and in establishing
22 the guilt of the defendant beyond a reasonable doubt?

23 MR. RUDROFF: Yes, Your Honor. If this case
24 were to proceed to trial, investigators from the New
25 York State Police would be called and they would

1 testify that in early 2020 they received a number of
2 cyber tips from the National Center for Missing and
3 Exploited Children that had been forwarded from Google
4 Inc. Those cyber tips disclosed that a Google account
5 that appeared to be controlled by the defendant
6 contained what was suspected to be child pornography.
7 The investigators would testify that they -- based on
8 this information they applied for and obtained a
9 search warrant for the defendant's home in Salamanca,
10 New York, and then on September 10, 2020 the New York
11 State Police executed that search warrant and they
12 seized numerous electronic devices that belonged to
13 the defendant including the three phones the court
14 referenced and that are specified in Paragraph 7C of
15 the plea agreement. Investigators from the New York
16 State Police would testify that they conducted a
17 forensic extraction of those cell phones and
18 investigators from the New York State Police as well
19 as special agents of Homeland Security -- Homeland
20 Security investigations, excuse me, would testify that
21 they analyzed those forensic images and found that all
22 three cell phones did in fact contain child
23 pornography. The images that depict child pornography
24 would be entered at trial based on that testimony and
25 presented to the jury. Additionally, the phones

1 contained three images specified in Paragraph 7E of
2 the plea agreement including an image file titled
3 1570921574478.JPG which is the image underlying count
4 one of the indictment. Those three images would be
5 introduced at trial and the jury would see that they
6 depict an adult hand manipulating the genitalia of
7 what appears to be a minor female. Minor victim one
8 would be called to testify. She would identify
9 herself in that photo to testify that the hand
10 depicted in that photo is the hand of the defendant
11 and that the genitalia depicted in that photo is her
12 own. She would testify as to her age establishing
13 that she was less than 12 years old at the time of the
14 offense, and she and her mother would be called to
15 testify that minor victim one was in the defendant's
16 custody or care at the time of the offense.

17 Additionally, service tags on the devices
18 themselves would establish that all of them were
19 manufactured outside of the United States and
20 therefore were in or affecting interstate or foreign
21 commerce, and lastly, testimony would establish that
22 the images um that were saved and sent to Google were
23 transported there by computer that is by the cell
24 phones again establishing the interstate commerce
25 element.

1 THE COURT: Mr. Calkins, did you hear what
2 the attorney for the Government stated the
3 Government's evidence would consist of in proving the
4 elements of this crime charged against you for which
5 you are offering to plead guilty and what its evidence
6 would consist of in proving your guilt beyond a
7 reasonable doubt?

8 MR. CALKINS: Yes, sir.

9 THE COURT: Is what he has stated in fact
10 what happened?

11 MR. CALKINS: Yes, sir.

12 THE COURT: Is what he has stated true?

13 MR. CALKINS: Yes, sir.

14 THE COURT: Do you disagree in any way with
15 anything that he has just stated?

16 MR. CALKINS: No, sir.

17 THE COURT: Once again, are you offering to
18 plead guilty to this charge because you are guilty and
19 for no other reason?

20 MR. CALKINS: Yes, sir.

21 THE COURT: Now, do you understand that if
22 your plea of guilty is accepted there will be a period
23 of time in which there will be a presentence
24 investigation conducted by members of the United
25 States Probation Office and what that investigation

1 consists of is a probation officer going out and
2 gathering as much information as he or she can gather
3 with respect to you, information such as but not
4 limited to education records, employment records,
5 medical records, military history records, criminal
6 history records, or any other type of records that
7 would have some bearing on your background and your
8 history. In addition to that type of information
9 gathering, the probation officer will also contact
10 third-parties such as relatives and friends,
11 employers, fellow employees or anybody else that the
12 probation officer finds or thinks would have
13 information with respect to you as far as what should
14 be included in the presentence investigation report
15 that he or she will be preparing.

16 In addition to that information gathering by
17 the probation officer, you and your attorney will have
18 the right to present information for inclusion in the
19 presentence investigation report. That can consist of
20 information obtained by your attorney and you of
21 third-parties such as relatives, friends, co
22 employees, anybody that you and your attorney think
23 would have information that would be beneficial to you
24 for inclusion in the presentence investigation report.
25 Also, this can be done by third-parties being directly

1 interviewed by the probation officer so as to supply
2 that information or those third-parties can submit
3 that information by way of letter writing to the
4 probation officer or you and your attorney can submit
5 written information with respect to what those
6 third-parties would be willing to say on your behalf.

7 In addition to third-parties providing
8 information, you and your attorney would have the
9 right to submit any other type of documentation that
10 you and he thinks should be included in the
11 presentence investigation report for part of the
12 judge's use in determining what an appropriate
13 sentence should be. You would also have the right to
14 be interviewed by the probation officer if you wish to
15 use that method of supplying information, and if you
16 do agree to be interviewed, you have the right to have
17 your attorney with you present all during that
18 interview process, or as an alternative, you and your
19 attorney can submit a written statement by you as to
20 what you think should be included by way of
21 information in the presentence investigation report.

22 This process that I have described that is
23 conducting an investigation for purposes of preparing
24 a preinvestigation -- presentencing investigation
25 report obviously takes a substantial period of time.

1 And because of that, even though your plea of guilty
2 might be accepted, the sentencing itself may not occur
3 for a substantial period of time, a number of weeks or
4 perhaps months. Knowing that, do you still wish to go
5 forward with the plea?

6 MR. CALKINS: Yes, sir.

7 THE COURT: Now, once the presentence
8 investigation has been completed, the probation
9 officer will then prepare a draft of a presentence
10 investigation report and that draft will be given to
11 you and your attorney and you and your attorney will
12 have the right to review that draft presentence
13 investigation report and then make any suggestions you
14 and your attorney think need to be made for purposes
15 of either adding to that report or subtracting
16 information from that report or correcting materials
17 in that report or modifying whatever is contained in
18 that report.

19 After you and your attorney complete that
20 process, the probation officer will then prepare a
21 final presentence investigation report. That final
22 presentence investigation report the original of which
23 will be given to the district judge assuming your plea
24 of guilty has been accepted for his use in determining
25 what an appropriate sentence should be used -- should

1 be imposed. That information will be used by him in
2 making his independent calculations under the federal
3 sentencing guidelines as well as considering any and
4 all other factors he wishes to consider in arriving at
5 an appropriate sentence to be imposed. You and your
6 attorney will be given a copy of this final
7 presentence investigation report and the Government
8 attorney to be given a copy of the final presentence
9 investigation report. Knowing that, that that's what
10 will happen if your plea of guilty is accepted, do you
11 still wish to go forward with this plea?

12 MR. CALKINS: Yes, sir.

13 THE COURT: Is there anything that you wish
14 to discuss with your attorney or ask of your attorney
15 at this time before we proceed any further?

16 MR. CALKINS: No, sir.

17 THE COURT: Is there anything about what we
18 have just done to this point that you do not
19 understand?

20 MR. CALKINS: No, sir.

21 THE COURT: Once again, you are offering to
22 plead guilty to the following charge set forth in the
23 indictment, count one that on or about December 2,
24 2018 in the Western District of New York you the
25 defendant, Robert Calkins Jr., did employ, use,

1 persuade, induce, entice and coerce a minor that is
2 victim one a person known to the Grand Jury to engage
3 in sexually explicit conduct for the purpose of
4 producing a visual depiction of such conduct that is a
5 digital file bearing the name 1570921574478.JPG which
6 visual depiction was produced and transmitted using
7 materials that had been mailed, shipped and
8 transported in and affecting interstate and foreign
9 commerce by any means including by computer all in
10 violation of Title 18 United States Code Sections
11 2251A and 2251E. How do you plead to that charge,
12 guilty or not guilty?

13 MR. CALKINS: Guilty.

14 THE COURT: Once again, the Court having
15 observed the demeanor of the defendant and having
16 heard his responses to my questions, I find that the
17 following exists in the case of United States of
18 America versus Robert Calkins Jr. It is the finding
19 of this Court that the defendant is fully competent
20 and capable of entering an informed plea of guilty to
21 having violated Title 18 of the United States Code
22 Sections 2251A and 2251E. That he is aware of the
23 nature of the charges and the consequences of his plea
24 of guilty to those charges and that his plea of guilty
25 is a knowing and voluntary one which is supported by

1 an independent basis in fact containing each of the
2 essential elements of the offense of the offenses
3 charged; therefore, it is hereby recommended that his
4 plea of guilty to having violated Title 18 United
5 States Code Sections 2251A and 2251E be accepted by
6 the district judge to whom this case has been
7 assigned. And I am now executing a report and
8 recommendation containing that recommendation of
9 acceptance of his plea of guilty this ninth day of
10 February 2023. As I understand it the defendant is
11 detained?

12 MR. RUDROFF: That's correct, Your Honor.

13 THE COURT: And the Government is requesting
14 that such detention continue?

15 MR. RUDROFF: That's correct, Your Honor.

16 THE COURT: Mr. Riotto, anything you want to
17 add?

18 MR. RIOTTO: No, Your Honor.

19 THE COURT: All right. As I indicated, Mr.
20 Calkins, the next step is the conducting of the
21 presentence investigation by the probation office and
22 the preparation of the presentence investigation
23 report as I described to you assuming that the
24 district judge accepts my recommendation and accepts
25 your plea of guilty a sentencing date will be set by

1 the district judge and notice will be given to you and
2 your attorney as to that date. In the meantime, you
3 are hereby continued in the remand of the United
4 States Marshal Service. Anything further?

5 MR. RUDROFF: Nothing from the Government,
6 Your Honor.

7 MR. RIOTTO: No, sir.

8 THE COURT: Thank you.

9 MR. RIOTTO: Thank you, Your Honor.

10 MR. RUDROFF: Thank you, Your Honor.

11 (Proceeding concluded at 11:27 a.m.)

12

13 CERTIFICATE OF COURT REPORTER

14

15 I certify that this is a true and accurate
16 record of proceedings in the United States District
17 Court for the Western District of New York before the
18 Honorable Richard J. Arcara on February 9, 2023.

19

20 S/ Brandi A. Wilkins

21 Brandi A. Wilkins

22 Official Court Reporter

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